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FILED

JUN - 6 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA1
2 NOT FOR PUBLICATION
3 NOT POSTED ON WEBSITE
45 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION
8

9 In re) Case No. 09-48562-E-13L
10 MICHAEL ALEXANDER DiMANNO and)
11 BETH KIMBERLY DiMANNO,)
12 Debtors.)
13 MAINSTAY BUSINESS SOLUTIONS,) Adv. Proc. No. 10-2198
14 Plaintiff,) Docket Control No. MDM-7
15 v.)
16 MICHAEL A. DiMANNO,)
17 Defendant.)
18

MEMORANDUM OPINION GRANTING DEFENDANT'S MOTION FOR LEAVE TO
CONDUCT LIMITED JURISDICTIONAL DISCOVERY

Michael DiManno, Counter-Claimant, seeks leave to perform jurisdictional discovery to clarify issues presented by Counter-Defendants' motion to dismiss. In their motion to dismiss, Counter-Defendants sought to dismiss the case on the basis of sovereign immunity since Mainstay Business Solutions is a "division" of a Blue Lake Rancheria Economic Development Corporation which is wholly-owned by Blue Lake Rancheria, an Indian Tribe. Through discovery, DiManno is seeking to determine the legal relationship between Mainstay Business Solutions, Blue Lake

1 Rancheria, and Blue Lake Rancheria Economic Development
2 Corporation. Discovery of these facts are asserted to be necessary
3 to assist the DiManno and the court in determining the validity of
4 the Counter-Defendants' argument that sovereign immunity extends to
5 the corporations and its divisions.

6 The court may permit discovery to establish jurisdictional
7 facts. *Butcher's Union Local No. 498 v. SDC Inv. Inc.*, 788 F.2d
8 535, 540 (9th Cir. 1986). A trial court should generally permit
9 jurisdictional discovery if the jurisdictional claim has a
10 reasonable basis and it appears the relevant facts may be
11 discovered. *Siderman de Blake v. Rep. of Argentina*, 965 F.2d 699,
12 713 (9th Cir. 1992). The court is not obligated to grant
13 discovery, however. The party seeking jurisdictional discovery
14 must have a colorable case for asserting jurisdiction and
15 demonstrates to the court what additional facts would be discovered
16 through limited discovery. See *Boschetto v. Hansing*, 539 F.3d 1011,
17 1020 (9th Cir. 2008) (district court did not abuse its discretion
18 in denying jurisdictional discovery where request was based on
19 little more than a hunch).

20 In their opposition, Counter-Defendants argue against granting
21 discovery on the basis that DiManno failed to offer anything but a
22 possibility that sovereign immunity would not apply but add that,
23 if discovery is granted, it should be limited to only written
24 discovery. As noted at a recent hearing, confusion does exist as
25 to which Blue Lake organizations are separate legal entities and
26 which are merely "divisions" of a single legal entity.

27 The Court will not address to which forms discovery should be
28 limited to at this time. DiManno may propound appropriate

1 discovery targeted at the limited scope of this court's
2 jurisdiction in light of Counter-Defendants' assertion of sovereign
3 immunity. If the parties feel that propounded discovery is too
4 broad, they may file an appropriate motion pursuant to Federal Rule
5 of Civil Procedure 26, as made applicable to this adversary
6 proceeding by Federal Rule of Bankruptcy Procedure 7026. If the
7 parties wish, the Court will make its facilities available for the
8 conduct of reasonable discovery. Moreover, the court will ensure
9 that it is available to quickly resolve any disputes that arise.

10 Hopefully, the inability of the parties to proceed with basic
11 jurisdictional discovery is not an indication of an unwillingness
12 of either or both parties to prosecute this case. As both parties
13 are aware, the Federal Rules of Civil Procedure give the court
14 ample tools to address improper conduct.

15 As additional discovery could provide valuable and relevant
16 information to the adversary proceedings at hand, the motion is
17 granted and discovery is allowed for Michael DiManno to determine
18 1) The legal relation of the Counter-Defendants to each other and
19 2) The validity and basis of the Counter-Defendants' claim of
20 sovereign immunity.

21 Dated: June 6, 2011


RONALD H. SARGIS, Judge
United States Bankruptcy Court

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This document does not constitute a certificate of service. The parties listed below will be served a separate copy of the attached document(s).

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